

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

San Luis Obispo, California

**RESOLUTION NO. R3-2004-0166
DECEMBER 3, 2004
ADOPTING A
TOTAL MAXIMUM DAILY LOAD AND IMPLEMENTATION PLAN
FOR DISSOLVED OXYGEN IN DAIRY CREEK**

The California Regional Water Quality Control Board Central Coast Region hereby finds:

1. The California Regional Water Quality Control Board, Central Coast Region (Regional Board), adopted the Water Quality Control Plan for the Central Coastal Basin (Basin Plan), on September 8, 1994. The Basin Plan includes beneficial use designations, water quality objectives, implementation plans for point source and nonpoint source discharges, and statewide plans and policies.
2. Section 303(d) of the Clean Water Act requires states to identify and prepare a list of water bodies that do not meet water quality standards and establish TMDLs for the listed water bodies. A TMDL is the loading capacity of a pollutant that a water body can accept while protecting beneficial uses. TMDLs can be expressed in terms of either concentration, mass per time, toxicity or other appropriate measure [40 CFR §130.2(i)].
3. Dairy Creek was identified as impaired by dissolved oxygen on the 2002 Clean Water Act Section 303(d) list of impaired water bodies. Therefore, the Regional Board is required to adopt a TMDL and associated Implementation Plan (40 CFR 130.6(c)(1), 130.7, Water Code section 13242).
4. Dairy Creek is located entirely within San Luis Obispo County.
5. The Final Project Report contains a Problem Statement, Numeric Targets, Source Analysis, Total Maximum Load, Linkage Analysis, Load Allocations, Margin of Safety, an Implementation Plan, and a Monitoring Plan.
6. The Regional Board has determined that the TMDL for dissolved oxygen in Dairy Creek is set at levels necessary to attain and maintain the applicable numeric water quality objectives taking into account seasonal variations and any lack of knowledge concerning the relationship between effluent limitations and water quality (40 CFR 130.7(c)(1)).
7. The County of San Luis Obispo (County) and land managers in partnership with the Natural Resources Conservation Service voluntarily implemented Management Practices (cattle exclusion and riparian revegetation) between 1994 and 1995 along Dairy Creek. The Regional Board finds that these non-regulatory actions will correct the impairment in Dairy Creek. Therefore, the Regional Board finds that the County's action will implement the assumptions of the TMDL in lieu of adopting a redundant program.

8. The County is the owner and land manager of the land on which grazing practices resulted in removing riparian cover such that dissolved oxygen levels were impacted. The Regional Board therefore has the authority to require technical and monitoring reports from the County pursuant to Water Code section 13267. Currently no reporting or monitoring requirement currently exists. The Morro Bay Volunteer Monitoring Program (VMP) monitors dissolved oxygen levels on Dairy Creek. Regional Board staff will also conduct additional dissolved oxygen monitoring at pre-dawn hours to obtain information relative to diurnal fluctuations. Regional Board staff has requested the County submit a technical report that includes an inventory of existing Management Practices (i.e. miles of creek excluded from cattle, locations of water gaps, and inventory of riparian revegetation). Regional Board staff has requested the County to submit annual reporting on land management (i.e. any proposed changes to Management Practices that may result in impacts to dissolved oxygen levels) and VMP monitoring data to confirm that progress is made towards TMDL achievement. The technical and monitoring reports will provide adequate documentation to determine whether the TMDL is being adequately implemented. The Executive Officer may require additional technical and monitoring reports or issue a formal order for these reports pursuant to Water Code section 13267. The County reports are necessary to allow the Regional Board to determine whether the existing program is adequate to achieve water quality objectives and if not, to identify additional measures to address the impairment. Any orders or requirements issued pursuant to Water Code section 13267 shall also consider whether the burden of monitoring and reporting requirements bears a reasonable relationship to the need for and benefit of the additional monitoring.
9. Regional Board staff has conducted TMDL outreach by coordinating the TMDL with the County and the VMP. In addition, public review and comment through this board hearing process provides another formal opportunity for public input for adoption of this TMDL. Notice of public hearing was given by notifying newspapers of general circulation within the Region and by mailing a copy of the notice to all persons requesting such notice and affected government agencies.
10. The Regional Board finds that an existing action makes any further regulatory action (i.e., any "project") unnecessary. Therefore, this action is not a "project" that requires compliance with the California Environmental Quality Act (California Public Resources Code §21000 et seq.). The Regional Board is not directly undertaking an activity, funding an activity or issuing a permit or other entitlement for use (Public Resources Code section 21065; 14 Cal. Code of Regs. §15378). The County is not required to obtain Regional Board "approval" to continue its remediation plan. The Regional Board is not approving any activity (14 Cal. Code of Regs. §15352); it is merely finding that an ongoing activity also satisfies other legislative requirements.
11. The TMDL and Implementation and Monitoring Plan do not allow degradation or lower water quality, and do not approve an activity that produces or may produce a waste or increased volume or concentration of waste or an activity that discharges or proposes to discharge to existing high quality waters. This resolution therefore complies with Resolution 68-16 and 40 CFR §131.12.
12. This TMDL will become effective upon approval by the Regional Board.
13. On December 3, 2004 in San Luis Obispo, California, the Regional Board held a public hearing and heard and considered all public comments and evidence in the record.

THEREFORE, BE IT RESOLVED,

1. The Regional Board, after considering the entire record, including oral testimony, adopts the Total Maximum Daily Load for Dissolved Oxygen in Dairy Creek included in the Final Project Report.
2. The Regional Board finds that the existing Management Practices voluntarily implemented in 1994 and 1995 by the County and land managers along Dairy Creek are an appropriate plan of implementation of the TMDL, will be adequate to correct the impairment and is expected to result in attainment of water quality objectives for dissolved oxygen in Dairy Creek. At this time, any further regulatory action to create another program of implementation by the Regional Board would be redundant.
3. The County is requested to submit a technical report that includes an inventory of existing Management Practices by March 15, 2005. The County is also requested to submit annual reporting on land management and VMP monitoring data by December 15, 2005 and each year thereafter. If the report is not adequate, the Executive Officer shall issue orders or requirements pursuant to Water Code section 13267 to ensure that the County provides the Regional Board with all monitoring reports necessary to evaluate progress toward attaining water quality objectives or to determine that the impairment has been resolved.
4. If the County's program does not correct the dissolved oxygen impairment by December 15, 2010, the County shall submit by March 15, 2011, a revised implementation plan for Regional Board review.
5. These findings shall remain valid as long as the COLD freshwater habitat numeric dissolved oxygen water quality objective of 7 mg/l and the general water quality objective that median values should not fall below 85 percent saturation as a result of controllable water quality conditions are attained in Dairy Creek no later than December 15, 2010.
6. The Regional Board may revoke these findings if it finds that the County's existing efforts are not adequately implemented or are no longer adequate to resolve the impairment.
7. The Regional Board's Executive Officer is directed to submit the TMDL to the U.S. Environmental Protection Agency (USEPA) for review. If during its approval process the U.S. EPA determines that minor, non-substantive corrections to the language of the TMDL are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Regional Board of any such changes.

I, Roger W. Briggs, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of the resolution adopted by the California Regional Water Quality Control Board, Central Coastal Region, on **December 03, 2004**.

Executive Officer